

INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA



STATEMENT BY

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PRESIDENT
OF THE
INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

ON

THE REPORT OF THE TRIBUNAL

AT

THE TWENTY-SECOND MEETING OF STATES PARTIES TO
THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA

4 JUNE 2012

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Madam President,

1. It is a great honour and a privilege for me to address the Meeting of States Parties for the first time in my capacity as President of the Tribunal. On behalf of the Tribunal, I extend to you my warmest congratulations on your election to the presidency of this Meeting. I am confident that under your experienced leadership this Meeting will achieve a successful outcome. Please allow me as well to express my appreciation to your predecessor, H.E. Ambassador Camillo Gonsalves, for his work and the support provided to the Tribunal.

2. The Annual Report of the Tribunal covering the period 1 January to 31 December 2011 is before you. As is customary, the report provides an overview of the judicial activities of the Tribunal and the work carried out during its two regular sessions. It also sets out the financial position of the Tribunal in 2011. It is not my intention to repeat the content of the report. I would like, however, to draw attention to several of its main elements and to furnish some additional information on recent activities. I shall also briefly refer to budgetary matters.

3. I begin by recalling that, on 15 and 16 June 2011, the twenty-first Meeting of States Parties elected seven members of the Tribunal for a term of nine years. Four members were re-elected: namely, Judge Cot (France), Judge Gao (China), Judge Lucky (Trinidad and Tobago) and Judge Ndiaye (Senegal). The three newly-elected members are Judge Kelly (Argentina), Judge Attard (Malta) and Judge Kulyk (Ukraine).

4. On 1 October 2011, I was elected President of the Tribunal for a three-year term. On the same day, Judge Hoffman was elected Vice-President. Judge Golitsyn was elected President of the Seabed Disputes Chamber on 6 October 2011. On the subject of the Registry, I should add that the judges re-elected Mr. Philippe Gautier, Registrar of the Tribunal, on 22 March 2011 and Mr Doo-young Kim, Deputy Registrar of the Tribunal, on 21 March 2012.

5. I would also like to seize this opportunity to thank my immediate predecessor, Judge José Luis Jesus, for his significant contribution to the Tribunal's work.

Madam President,

6. I am pleased to report that the year 2011 showed substantial growth in the Tribunal's judicial activities. This growth reflects an increase not only in the number of cases but also in the complexity and variety of matters before the Tribunal. In 2011, the Tribunal had to deal with a total of four cases. These cases involve a wide-ranging spectrum of matters including the delimitation of maritime boundaries, the responsibilities and obligations of States sponsoring persons and entities in the Area, the detention of vessels in relation to activities connected with marine scientific research and protecting the cultural heritage, and claims for damages arising out of the arrest of vessels. I would like to describe to you the main developments in these cases.

7. On 14 March 2012, the Tribunal gave a judgment in its first maritime delimitation case: the dispute concerning the delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal (Case No.16). The hearing in this case took place from 8 to 24 September 2011 and was immediately followed by judicial deliberations.

8. In its judgment the Tribunal determined the maritime boundary between the Parties in relation to the territorial sea, the exclusive economic zone and the continental shelf. A distinguishing feature of this case was that the Tribunal was also called upon to consider the delimitation between the Parties of the continental shelf beyond 200 nautical miles.

9. In relation to the delimitation of the territorial sea, the Tribunal found that there was no agreement between the Parties within the meaning of article 15 of the Convention. Having also concluded that there was no historic title or other special circumstance relevant to the area to be delimited, the Tribunal proceeded to effect the delimitation of the territorial sea by means of an equidistance line, pursuant to article 15 of the Convention.

10. Turning to the delimitation of the exclusive economic zone and the continental shelf within 200 nautical miles, the Tribunal applied the equidistance/relevant circumstances method, following the three-stage approach as developed in the most recent case law. The Tribunal first constructed its own provisional equidistance line. It then determined that the concavity of Bangladesh's coast was a relevant circumstance because the provisional equidistance line produced a cut-off effect on that coast. It therefore decided to adjust the equidistance line.

11. With regard to the continental shelf beyond 200 nautical miles, the Tribunal first established that it had jurisdiction to delimit the continental shelf in its entirety. It then examined questions relating to, *inter alia*, the Parties' entitlements to a continental shelf beyond 200 nautical miles, and the meaning of "natural prolongation" and how it inter-relates with that of "continental margin". From this examination, the Tribunal concluded that the Parties had overlapping entitlements to the continental shelf beyond 200 nautical miles and the Tribunal proceeded to effect the delimitation. In this connection the Tribunal stated – I quote:

"Article 83 of the Convention applies equally to the delimitation of the continental shelf both within and beyond 200 [nautical miles]."
- end of quotation (paragraph 454 of the Judgment).

The Tribunal further observed – and I quote:

"the delimitation method to be employed in the present case for the continental shelf beyond 200 nautical miles should not differ from that within 200 [nautical miles]. Accordingly, the equidistance/

relevant circumstances method continues to apply for the delimitation of the continental shelf beyond 200 [nautical miles].”

– end of quotation (paragraph 455 of the Judgment).

12. After re-examining the question of relevant circumstances, the Tribunal decided that its adjusted equidistance line would continue in the same direction beyond the 200-nautical-mile limit of Bangladesh until it reached the area where the rights of third States might be affected. The Tribunal finally applied the test of disproportionality and concluded that the adjusted equidistance line did not lead to any significant disproportion in the allocation of maritime areas to the Parties in relation to the respective lengths of their coasts.

Madam President,

13. I am pleased to report to you that the decision in the case was delivered little more than two years after the proceedings were instituted, which is quite a short period for a complex delimitation case.

14. I will now address Case No. 17. On 1 February 2011, the Seabed Disputes Chamber delivered its advisory opinion in the case concerning *Responsibilities and obligations of States sponsoring persons and entities with respect to activities in the Area*. My predecessor already brought to the attention of the twenty-first Meeting of States Parties the latest developments at the time with regard to this case and a synopsis of the opinion can be found in paragraphs 49 to 55 of the annual report of the Tribunal. I wish, however, to highlight that this was the first time the Seabed Disputes Chamber was seized of a case and this involved the first request for an advisory opinion referred to the Tribunal. While this case had to be dealt with in parallel with other cases, it was handled expeditiously and completed in slightly less than nine months from receipt of the request. I also wish to note that the advisory opinion has been well received within the framework of the International Seabed Authority and that the Authority's Legal and Technical Commission, at its seventeenth session, recommended *inter alia* that the necessary adjustments be made to the Regulations on Polymetallic Nodules to bring them into line with the Regulations on Polymetallic Sulphides with respect to best environmental practices and the further development of the precautionary approach. It also suggested that the Authority should prepare model legislation to assist sponsoring States in fulfilling their obligations as laid out in the opinion¹.

15. The M/V Louisa Case (Case No.18), which is pending before the Tribunal, was instituted on 24 November 2010 by Saint Vincent and the Grenadines against the Kingdom of Spain in a dispute concerning the detention of the M/V “Louisa”. The Applicant maintains that the vessel was conducting scientific research with a valid permit and thereafter detained in breach of a number of

¹ ISBA, Summary report of the Chair of the Legal and Technical Commission on the work of the Commission at its seventeenth session, ISBA/17/C/13 (13 July 2011), paragraph 31, available at: <http://www.isa.org.jm/files/documents/EN/17Sess/Council/ISBA-17C-13.pdf>.

provisions of the Convention. For its part, the Respondent contends that the detention took place in the course of criminal proceedings and on account of violations of the laws on the protection of Spanish historical patrimony. On 23 December 2010, the Tribunal delivered an Order in respect of a request submitted by the Applicant for the prescription of provisional measures. The merits of the case are now before the Tribunal. I would like to mention that all written pleadings have been duly filed by the Parties and the hearing is scheduled to take place in October 2012. The Judgment in the case is expected to be delivered in the second quarter of 2013.

16. On 4 July 2011, a new case was submitted to the Tribunal, the *M/V "Virginia G" Case* (Case No. 19). This case was brought before the Tribunal by the notification of an exchange of notes between Panama and Guinea-Bissau with respect to a dispute concerning the arrest of the vessel *Virginia G*. According to the statement of claim submitted by Panama, the oil tanker *Virginia G* was carrying out refuelling operations for fishing vessels in the exclusive economic zone of Guinea-Bissau when it was arrested on 21 August 2009 by Guinean authorities and released on 22 October 2010. Panama is seeking reparation for the damages allegedly suffered. The time-limits for the filing of written pleadings in this case were set by Orders dated 18 August, 30 September and 23 December 2011. The first round of written pleadings was concluded on 30 May 2012.

17. With regard to these cases, I would like to stress that the Tribunal has sought to establish and meet exacting schedules with a view to conducting its judicial procedures in a cost-effective and timely manner.

Madam President,

18. The annual report gives an account of the role played by the President of the Tribunal with regard to the appointment of arbitrators in arbitral proceedings instituted pursuant to annex VII to the Convention. My predecessor exercised this function in respect of the dispute between Mauritius and the United Kingdom concerning the "Marine Protected Area" related to the Chagos Archipelago.

19. The Tribunal held two sessions in 2011, during which it considered legal and judicial matters as well as organizational and administrative matters. It also reviewed and exchanged views on recent developments concerning law of the sea matters: that review and exchange having been undertaken, in part, by the chambers of the Tribunal. During those sessions, the Tribunal gave consideration to budgetary matters, including the budget of the Tribunal for 2013-2014, the report on budgetary matters for the financial periods 2009-2010 and 2011-2012, the cash flow situation, the status of contributions, and the conditions of service and compensation for members of the Tribunal. In addition, the Tribunal discussed administrative matters, in particular, in relation to its Staff Regulations and Rules and the recruitment of staff. Issues concerning the Tribunal's premises, courtroom technology and electronic systems were also addressed.

20. I will briefly refer now to budgetary matters. Three documents relating to the budgetary matters of the Tribunal have been placed before this Meeting of States Parties. These documents are:

- Report on budgetary matters for the financial periods 2009-2010 and 2011-2012 (document SPLOS/242);
- Appointment of auditor for financial years 2013-2016 (document SPLOS/243); and
- Draft budget proposals of the Tribunal for 2013-2014 (SPLOS/2012/WP.1).

21. Regarding the proposed budget for 2013-2014, I wish to note that the proposals for recurrent expenditures follow a zero-growth approach, subject however to an adjustment for factors beyond the control of the Tribunal. Earlier in my speech, I referred to the increased judicial workload of the Tribunal. In particular in 2013 and 2014, the judicial work of the Tribunal will include two cases on the merits, namely, Cases No. 18 and No. 19. In addition, the Tribunal should remain prepared to deal with urgent cases including prompt release cases and requests for provisional measures. The proposed budget takes due account of these developments and has therefore resulted in some increases in respect of case-related expenditures. The Registrar will present more detailed information on these matters in a separate statement.

Madam President,

22. The Tribunal has set up a number of initiatives with a view to promoting the dissemination of knowledge about the Convention and its dispute settlement procedures. One such initiative is the internship programme, from which 12 persons from 12 different countries benefitted in 2011. I should mention that a "Trust fund for the law of the sea" has been established by the Tribunal to provide applicants from developing countries with financial assistance to enable them to participate in the programme. Contributions to the fund have been made by a company from the Republic of Korea and operating in Hamburg and by the Korea Maritime Institute. I take this opportunity to thank them for their financial assistance.

23. A further initiative is the capacity-building and training programme on dispute settlement under the Convention conducted with the support of the Nippon Foundation. In 2011, seven fellows from Angola, France, Jamaica, Panama, Senegal, Tonga and Vietnam participated in the programme. During this nine-month programme, participants attended lectures on issues related to the law of the sea and maritime law, as well as training courses on negotiation and delimitation. I thank the Nippon Foundation for its financial support of this programme.

24. The Tribunal also provided cooperation to the International Foundation for the Law of the Sea (a foundation formed under German law) in the organization

of the Summer Academy. The fifth Summer Academy on “Promoting Ocean Governance and Peaceful Settlement of Disputes” was held from 24 July to 19 August 2011. Twenty-nine persons from twenty-four different countries participated. I would like to take this opportunity to thank the Foundation for organizing the Summer Academy.

25. In connection with these activities, I have the pleasure to inform the Meeting of States Parties that a new trust fund was established in May 2012 with financial support from the China Institute of International Studies. This trust fund will serve to finance training activities of the Tribunal and to provide grants to participants from developing countries in the internship programme and the summer academy. I wish to express my sincere appreciation to the China Institute of International Studies.

Madam President,

26. This year marks the 30th anniversary of the opening for signature of the Convention, a treaty which has significantly contributed to maintaining international peace and security at sea, promoting economic activities and protecting the marine environment. In achieving these goals, the availability of resort to peaceful mechanisms for the settlement of disputes is of utmost importance and I note that the Tribunal has been instrumental in this regard.

27. In concluding, I would like to convey my appreciation to the Legal Counsel, to the Director of the Division for Ocean Affairs and the Law of the Sea (DOALOS) and to his staff for the invaluable work accomplished in relation to the Convention and the excellent cooperation extended to the Tribunal.

I thank you for your kind attention.